



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BRUCE E. BABBITT  
ATTORNEY GENERAL

June 6, 1978

Honorable Carolyn Warner  
Superintendent of Public Instruction  
Arizona Department of Education  
1535 West Jefferson  
Phoenix, Arizona 85007

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**ARIZONA ATTORNEY GENERAL**

Re: 78-103 (R78-138)

Dear Ms. Warner:

This is in response to your letter dated May 9, 1978, concerning the due process rights of handicapped children.

As we understand the facts implicit in your question, a school district originally placed a handicapped child in a private school for special education purposes. The district made the private placement because it did not, at that time, have a special education program adequate for the child's needs. Subsequently, the school district developed what it thinks is such a program, but the child's parents disagree. The question then is whether the parents must accept the district's decision concerning the appropriateness of its program in order for the child's special education to be provided by or at the expense of the district, or whether the parents are entitled to a due process hearing to determine the appropriateness of the program.

We have been advised that the school district has received funds from the State Board of Education, which in turn were received by the State Board under the Education of All Handicapped Children Act, 20 U.S.C. §§ 1411, et seq. (the "Act"). That Act, in 20 U.S.C. § 1415(a), provides that all educational agencies which receive assistance under the Act<sup>1</sup> shall:

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<sup>1</sup> It is not certain that the district must receive assistance under the Act in order for the requirements of 20 U.S.C. § 1415(a) to be applicable. Those requirements may be applicable even if the district receives no such assistance because of 20 U.S.C. § 1412(5), which requires, in order for a state to receive assistance under the Act, that the state has established the procedural safeguards required by 20 U.S.C. § 1415.

establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

Among these procedures is that the parents be provided "an impartial due process hearing" relating to, among other things, their complaint concerning the "educational placement" of their child. 20 U.S.C. §1415(b)(1)(E) and (b)(2).<sup>2</sup> Moreover, pending a decision relating to the hearing, the child's educational placement must not be changed. 20 U.S.C. §1415(e)(3).

There is nothing conflicting in State law. To the contrary, A.R.S. § 15-1014 requires the school district to review the placement and educational development of a child in a special education program once each semester and submit a copy of the results of the review to the parents or guardian of the child. In addition, a child cannot be placed or retained in a special education program without the approval of his parent or guardian. A.R.S. § 15-1013.<sup>3</sup>

However, when a parent chooses to place a child in a private school or facility without first having the child

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<sup>2</sup>The Department of Health, Education and Welfare has promulgated regulations interpreting the Act. In particular, 45 C.F.R. §121a.403(B) provides:

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under sections 121a.500-121a.514 of subpart B.

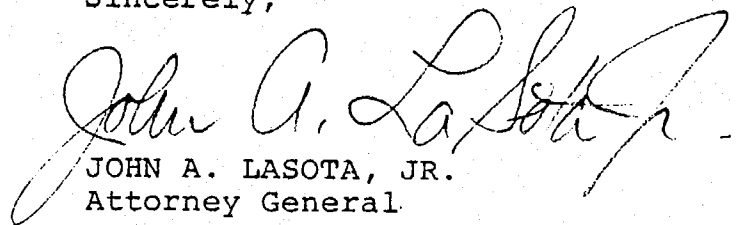
<sup>3</sup>A parent may request a due process hearing to challenge the proposed placement as outlined in Section XI of the "Special Education Conditions and Standards Relating to Identification and Placement." These were developed and adopted by the State Board of Education, in accordance with A.R.S. § 15-1015.01, to comply with A.R.S. §§ 15-1010, et seq., this Act and 29 U.S.C. §794 (Non-discrimination on Basis of Handicap).

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evaluated by the public school district, the public school cannot be required to pay for the child's education at the private school or facility. A.R.S. § 15-1015(E); 20 U.S.C. §§1415, 1412(2)(B); 45 C.F.R. §121a.403(a).

In summary, under the circumstances of this case, the parents are entitled to a due process hearing to determine the appropriateness of the program offered by the district.

Sincerely,

  
JOHN A. LASOTA, JR.  
Attorney General

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